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Chapter 17: Insurance

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CHAPTER 17

Insurance

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A. Automobile Insurance

§17.1. Repeal of insurance premium surcharges. The unique Massachusetts attempt to base part of the premium charge of individuals' compulsory motor vehicle liability insurance upon the operating records of car drivers came to an end early in the 1956 legislative session. The Highway Safety Act,[1] passed in 1953, had provided for the assessment of points against the operating records of Massachusetts drivers, the number of points in a particular case to be dependent upon the seriousness of the offense. Starting with the automobile registration year 1956, these points were to be reflected by premium surcharges on compulsory motor vehicle liability policies. The anticipated result would have been to decrease premium rates for operators with good records to something less than they would have been without the point system. Correspondingly, the careless driver would have been charged a premium (with surcharges) more in keeping with the poor experience indicated by his operating record.

However, operation of the provisions of the Highway Safety Act brought opposition on two fronts. Two separate court actions,[2] intended to test the constitutionality of the measure, were begun. At the same time, various bills calling for repeal of the premium surcharges came before the legislature. Repeal of the provisions of the Highway Safety Act dealing with premium surcharges was effected early in the legislative session, although the point system itself was continued in existence.[3] The prompt action of the legislature left the court actions moot. Possibly, if it had been actually tested on its merits, the application of points to insurance premium charges might have been disapproved by the Supreme Judicial Court.

After repeal, primary interest centered on the question of the disposition of the surcharges already collected by insurance companies

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§17.1. [1] G.L., c. 90A, added by Acts of 1953, c. 570, §1, as amended.

[2] Winch v. Registrar of Motor Vehicles, 1956 Mass. Adv. Sh. 735, 135 N.E.2d 17; Gilmore v. Registrar of Motor Vehicles 1956 Mass. Adv. Sh. 739, 135 N.E.2d 19.

[3] Acts of 1956, c. 51.

issuing compulsory motor vehicle liability policies, surcharges, which, in turn, had been used to reduce the premium charges of all insureds not subjected to surcharges. The act repealing the assessment of premium surcharges was effective early in February, but the policy year ran concurrently with the calendar year. An opinion was requested of the Justices on a legislative proposal to require refund of the surcharges by the companies to their insureds. The Justices advised[4] that it would not be constitutional for the General Court to enact such a law, as it would be creating new substantive rights retrospectively based wholly on past events.

§17.2. Compulsory automobile liability insurance. Until 1956, Massachusetts was the only state to have a compulsory system, calling for evidence of automobile liability insurance before issuance of registration plates. Although not technically a part of the Commonwealth's legal history for 1956, it seems important to call attention to the enactment in New York of a compulsory system somewhat similar to that existing in Massachusetts.[1] The New York law calls for higher limits of liability, including property damage coverage,[2] and purports to impose the New York requirements on nonresident owners and operators while in New York. The law retains the ordinary rating system and does not, as in the case of Massachusetts, put the authority to set rates for compulsory coverage in the Insurance Commissioner.

In the coming year, other states will probably be considering the possibility of adopting a compulsory system. The Massachusetts experience has always been a major factor in the consideration of such legislation. For the first time we in turn will have the experience of another state to study, in determining whether modification of the Massachusetts law is in order.

Interest has already been shown in the application to nonresidents of the Massachusetts compulsory law.[3] Further, a broad study of the motor vehicle laws, and of the insurance laws as they relate to motor vehicles, has been authorized.[4] The wide range of the study and its relatively long duration may result in proposals for a comprehensive overhauling of the present system.

Minor changes were actually effected in the existing compulsory law in 1956. Reports of motor vehicle accidents had been required to be made to the Registrar of Motor Vehicles in cases involving over $100 property damage.[5] This limit has now been raised to $200.[6]

Another revision now makes it mandatory for an insurer, when issuing legal notice of cancellation of compulsory motor vehicle

4 Opinion of the Justices, 1956 Mass. Adv. Sh. 671, 134 N.E.2d 923.

§17.2. 1 N.Y. Laws 1956, c. 655. For an excellent discussion of the new statute and its background, see Note, 32 N.Y.U.L. Rev. 147 (1957).
2 From $10,000 to $20,000 for bodily injury, and $5000 property damage.
3 Resolves of 1956, c. 53.
4 Id., c. 125.
5 G.L., c. 90, §26.
6 Acts of 1956, c. 225.

liability policies, to state the specific reason or reasons for such cancellation.[7] Under prior statutes no reasons were required to be given in the original notice of cancellation, although the insured did have the right to obtain the particular reasons upon proper request made to the insurer.

B. Life Insurance

§17.3. Group insurance for local government employees. A 1955 enabling statute provided for establishment of contributory group life, accident, hospitalization, surgical, and medical insurance plans for employees of local government units.[1] Two bills were passed and approved during the 1956 session amending this statute,[2] but the contents of both were, apparently, included within another act passed later in the session completely revising G.L., c. 32B.[3] Many changes were effected by the latter act, the principal ones being the bringing of employees of housing authorities within the scope of such plans, a change in the method of determining hospital, surgical, and medical benefits payable, and provisions for combining two or more governmental units within the same county into one group for purposes of administration and coverage.

§17.4. Group insurance for state government employees. Group coverage for state employees somewhat similar to that provided for local government employees by G.L., c. 32B had also been authorized in 1955.[1] Judges paid by the state (Land Court, Probate, Superior, and Supreme Judicial Courts) were specifically excluded from the group.[2] An amendment enacted in 1956 [3] now brings these judges within the potential group. It also makes clarifying changes as to termination of coverage, payment of premiums, and the meaning of a "regular work week of permanent employment," one fundamental test for inclusion in the group as an employee of the state.

§17.5. Group life insurance. Group life insurance is defined in G.L., c. 185, §133. Under 1956 legislation a new subsection (f) has been added to Section 133 permitting members of charitable and religious associations to insure members under a group plan of life insurance, provided the proceeds are payable to the association or are to be used for the purpose of carrying out the association's objectives.[1] It is assumed that this legislation will encourage members to enter into group plans, probably at somewhat more attractive rates than

[7] Id., c. 191.

§17.3. [1] G.L., c. 32B, added by Acts of 1955, c. 760, §1.
[2] Acts of 1956, cc. 149, 173.
[3] Id., c. 730.

§17.4. [1] G.L., c. 32A, added by Acts of 1955, c. 628, §1.
[2] G.L., c. 32A, §1.
[3] Acts of 1956, c. 582.

§17.5. [1] Acts of 1956, c. 533.

is possible on an individual basis, which will ultimately benefit the particular organization.

C. Policy Construction

§17.6. Life insurance: Condition precedent. It is provided in G.L., c. 175, §186 that "No oral or written misrepresentation or warranty made in the negotiation of a policy of insurance by the insured or in his behalf shall be deemed material or defeat or avoid the policy or prevent its attaching unless such misrepresentation or warranty is made with actual intent to deceive, or unless the matter misrepresented or made a warranty increased the loss."

The possible application of this section to a clause in an application for a life policy was involved in *Krause v. Equitable Life Insurance Co. of Iowa.*[1] In the application the prospective insured stated: "I agree that . . . the Company shall incur no liability until said policy is delivered to me and the entire first premium therefor is actually paid while I am in good health, and then only if I have not consulted or been treated by any physician or practitioner since completion of the medical examination." Four days after the medical examination but prior to the issuance of the policy and payment of the first premium, the prospective insured suffered an attack diagnosed as angina pectoris. He was treated by a physician. A short time later the premium was paid and the policy issued, without knowledge on the part of the insurer of these facts. The insured returned to work the day following his attack and continued at his occupation until his death some eight months later.

The beneficiary, in an action of contract, asserted that the statement in the application constituted a warranty or representation within the meaning of G.L., c. 175, §186. If so, the beneficiary would have been entitled to a jury determination on the existence of an intent to deceive or increase of loss.

However, the Supreme Judicial Court held that the clause in question went further and, in effect, constituted an agreement between the company and the insured that certain conditions must be met before coverage under the policy would attach. Construing the clause as a condition precedent, the Court held that no contractual duty on the part of the insurer arose, as the conditions had not been satisfied.

§17.7. Life insurance: Injury through "accidental means." A recurring problem, in other jurisdictions as well as in Massachusetts, has been the difference in coverage granted under insurance policies written to require that the insured event be caused by an accidental means as opposed to those written to require only that the insured event be an accidental result. As pointed out in the 1954 Annual Survey,[1] there is a large number of cases dealing with this problem,

§17.6. [1] 333 Mass. 200, 129 N.E.2d 617 (1955).

§17.7. [1] 1954 Ann. Surv. Mass. Law §18.8.

which involve accident insurance policies or the double indemnity provisions of life insurance policies. A somewhat similar problem can arise under liability coverage.[2] In *Reeves v. John Hancock Mutual Life Insurance Co.*,[3] a double indemnity provision requiring the accidental means test was considered by the Court.

The insured had suffered pain while lifting mortar tubs. A subsequent operation disclosed a femoral hernia. Death followed shortly thereafter, the direct cause being attributed to bronchopneumonia, the antecedent cause being an intestinal obstruction due to strangulated femoral hernia. An action was begun by the beneficiary to recover the "additional" death benefits provided under the policies in the event the insured sustained bodily injury "solely through external, violent and accidental means."

The Court upheld a directed verdict for the defendant insurer. The only apparent external cause of the injury had been the lifting of the tubs. The evidence did not indicate that the lifting had been unintentional or accompanied by any unexpected occurrence. In view of the position the Court has taken in the past, that there is a distinction in coverage between accidental means and accidental result,[4] it was evident to the Court in the *Reeves* case that, while the death may have been accidental, the cause or means was not.

§17.8. Group life insurance: Exclusion for injuries sustained "in the course of employment." A group life insurance policy, issued to an employer, came under consideration in *Towle v. John Hancock Mutual Life Insurance Co.*[1] The clause in question provided coverage against loss of life "as a result of bodily injury sustained solely through external, violent and accidental means, directly and independently of all other causes, and which do not arise out of and in the course of employment for wage or profit." It will be noted that the phrase "out of and in the course of employment" follows the language universally applied in workmen's compensation law.[2]

The employee in the *Towle* case had died as the result of injuries received when he was struck on a private way owned by his employer by an automobile driven by a fellow employee. At the time of the accident the employee had completed his work for the day and was on his way to a shed on the employer's premises to pick up a Christmas turkey supplied by his employer. The widow, beneficiary under the policy, accepted benefits payable under the workmen's compensation law. In this case, she conceded that the fatal injuries arose out of and in the course of the deceased's employment.

However, in her action to recover under the insurance policy, she made the contention that employment for "wage or profit" was not

2 Sontag v. Galer, 279 Mass. 309, 181 N.E. 182 (1932).
3 333 Mass. 314, 130 N.E.2d 541 (1955).
4 Lee v. New York Life Insurance Co., 310 Mass. 370, 38 N.E.2d 333 (1941).

§17.8. 1 333 Mass. 345, 130 N.E.2d 685 (1955).
2 G.L., c. 152, §26. See 1 Larson, The Law of Workmen's Compensation, cc. 3-5 (1952).

involved at the time of the accident, because the deceased was not then actually engaged in work for which he was to be paid. The Court rejected this contention, proceeding on the basis that the obvious intent was to exclude injuries compensated under the workmen's compensation statutes. The words "wage or profit," said the Court, referred only to the type of employment involved. The adoption by the Court of a construction closely paralleling that given the workmen's compensation statutes would appear warranted in view of the close similarity of language.

§17.9. Motor vehicle liability policy: Employee exclusion. In *Hagerty v. Myers*[1] the effect of the employee exclusion in a motor vehicle liability policy (guest coverage and noncompulsory) was considered. The exclusion excluded coverage for "bodily injury . . . of any employee of the insured while engaged in the employment, other than domestic, of the insured or in domestic employment if benefits therefor are either payable or required to be provided under any workmen's compensation law."

The plaintiff secured an execution against his employer for injuries received by the negligent operation of an automobile on a private way. He brought the present suit to reach and apply the obligation of the insurer under its motor vehicle policy. The employer did not, and was not required to have, workmen's compensation coverage.

The Supreme Judicial Court reversed a judgment for the plaintiff and ordered that a decree be entered dismissing the bill. The court below had apparently adopted plaintiff's contention that the only employees excluded were those covered, or required to be covered, by the workmen's compensation law. As was pointed out by the Supreme Judicial Court, such an interpretation gave no weight to the phrases in the exclusion which deal with domestic employment. Properly construed, the exclusion eliminated all employees from coverage, except domestic employees, and even domestic employees were also excluded if benefits were payable or required to be provided under any workmen's compensation law.

§17.10. Fire insurance: "Direct loss." A declaratory judgment action was undertaken in *Williams v. Liberty Mutual Insurance Co.*[1] to determine the meaning of "direct loss" under the extended coverage provisions of a fire insurance policy. The policy in question covered direct loss by windstorm but excluded loss caused directly or indirectly by cold weather. A windstorm tore a shutter off a louver in the attic of the insured premises. Following this a spell of cold weather set in. Without the protection of the shutter, freezing air entered the premises resulting in frozen pipes, followed by bursting and water damage. The problem was to determine how much of the damage was a direct loss attributable to the windstorm. The Court held the only direct loss was the damage to the shutter, the other loss

§17.9. [1] 333 Mass. 387, 131 N.E.2d 176 (1955).

§17.10. [1] 1956 Mass. Adv. Sh. 1017, 135 N.E.2d 910.

being of a consequential nature was not covered. The term "direct loss" was defined as "the immediate physical damage resulting from the effect of the wind." [2]

§17.11. Motor vehicle liability insurance: Contracts with minors. An unusual chain of events involving, among other things, disaffirmance of a contract by a minor, characterized *Rothberg v. Schmiedeskamp*.[1] The minor defendant's motor vehicle liability policy, in addition to the statutory compulsory coverage, provided guest coverage and coverage for the defendant while using another automobile. The policy further provided that coverage would terminate upon transfer or sale of the insured vehicle.

Subsequent to the issuance of the policy the defendant exchanged his car for a different one but sent no notice of the trade to his insurer. While driving the newly acquired automobile, he collided with a tree or pole causing injury to a guest occupant, the event giving rise to this action. The insurer was permitted to intervene[2] on a bill for a declaration of its rights and obligations under the contract in a suit brought by the injured guest against the defendant.

After the accident the minor defendant disaffirmed his contract of sale or exchange of his original automobile, apparently for the purpose of reinstating his insurance, the theory being that repudiation of that contract made the original sale void. Thus the minor would retain coverage under his liability policy while driving another automobile.

However, the Court said that avoidance of the sale involving the exchange of automobiles would not reinstate the policy, the insurance company not having been a party to the sale and the policy having terminated, under its provisions, upon sale of the original automobile. The rights acquired under the policy were not affected by the insured's subsequent acts. A quotation from *Badger v. Phinney*[3] summed up the Court's view of the case in a clear fashion: "The 'privilege of infancy is a shield, and not a sword.' " [4]

§17.12. Fire insurance: Insurable interest. It is somewhat rare to have questions of insurable interest arise in the present day. The question was raised by the insurer, together with a defense of late notice of loss, in the Massachusetts federal court in *Goodman v. Quaker City Fire & Marine Insurance Co.*[1]

The owner of a dwelling had two mortgages on his property and his fire insurance was payable to the mortgagees. The second mortgagee foreclosed and purchased the equity of redemption, leaving the mort-

[2] 1956 Mass. Adv. Sh. at 1020, 135 N.E.2d at 912.

§17.11. [1] 1956 Mass. Adv. Sh. 611, 134 N.E.2d 544.

[2] An unusual procedure permitted intervention in the case, and the opinion of the Supreme Judicial Court intimates that such a procedure would not be permitted again. 1956 Mass. Adv. Sh. at 616, 134 N.E.2d at 547.

[3] 15 Mass. 359, 8 Am. Dec. 105 (1819).

[4] 15 Mass. at 363, 8 Am. Dec. at 108.

§17.12. [1] 141 F. Supp. 61 (D. Mass. 1956).

gagor neither legal nor equitable title nor possession. The fire insurance policy was renewed at a subsequent date, in its original form, and premiums were tendered and retained to the date of the loss.

The insurer had raised the defense that the policy was void because of a lack of an insurable interest in the property by the mortgagor after the foreclosure had taken place. Based on the general principle that an insurable interest requires the derivation of a benefit to the insured from the continued existence of the property or the sustaining of a loss by reason of its destruction, the federal District Court held that in its opinion Massachusetts law would find an insurable interest. Although the named insured had no title or possession in the property, the fact that he could have paid the note on the first mortgage and taken an assignment of the mortgage and debt and enforced it against the new owner of the equity of redemption gave the named insured an insurable interest. The connection appears to be rather tenuous and would seem to be the limit to which an insurable interest could be stretched.

However, notice of the loss as required by the terms of the policy was not given to the insurance company. It was, therefore, held that failure to give proper notice resulted in forfeiture of any claims under the policy.

§17.13. Investments. General Laws, c. 175, §63 is the basic Massachusetts statute governing investments of insurers. A new clause, 14C, has been added, allowing investment in bonds and notes of corporations and business trusts secured by high credit lessee leases or rent assignments.[1] A mortgage is also required.

Section 7A of Chapter 175 was also amended to permit domestic companies to eliminate the quasi-fund-holding Canadian receipts as the source for Canadian mortgage investments.[2] The aggregate amount of permissible Canadian mortgage investments was reduced from 5 to 3 percent of reserve liability.

§17.14. Mutual companies: Classification of policies. An amendment to G.L., c. 175, §80 permits mutual companies, subject to the approval of the Commissioner of Insurance, to establish separate classifications of policies covering atomic or flood risks. Separate dividend percentages may also be applied to these risks.[1]

§17.13. [1] Acts of 1956, c. 373.
[2] Id., c. 137.

§17.14. [1] Acts of 1956, c. 315.